

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Amendment of Parts 1, 21, 73, 74 and 101 of the)	WT Docket No. 03-66
Commission's Rules to Facilitate the Provision of Fixed)	RM-10586
and Mobile Broadband Access, Educational and Other)	
Advanced Services in the 2150-2162 and 2500-2690)	
MHz Bands)	
)	
Part 1 of the Commission's Rules - Further Competitive)	WT Docket No. 03-67
Bidding Procedures)	
)	
Amendment of Parts 21 and 74 to Enable Multipoint)	MM Docket No. 97-217
Distribution Service and the Instructional Television)	
Fixed Service to Engage in Fixed Two-Way)	
Transmissions)	
)	
Amendment of Parts 21 and 74 of the Commission's Rules)	WT Docket No. 02-68
With Regard to Licensing in the Multipoint Distribution)	RM-9718
Service and in the Instructional Television Fixed Service)	
for the Gulf of Mexico)	
)	
Promoting Efficient Use of Spectrum Through)	WT Docket No. 00-230
Elimination of Barriers to the Development of)	
Secondary Markets)	

**SPRINT CONSOLIDATED OPPOSITION TO
PETITIONS FOR RECONSIDERATION**

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TABLE OF CONTENTS

Executive Summary	ii
I. INTRODUCTION	2
II. DISCUSSION	2
A. The Commission Should Not Place Restrictions On Leasing Or Other Contractual Activities Between BRS And EBS Entities.....	2
1. Prohibitions Against Purchase Options Are Unwarranted.....	3
2. No Legitimate Interest Would Be Served By Requiring Leases To Be Filed In Complete Form.....	4
3. There Is No Legitimate Reason To Specify A 15-Year Lease Term In The BRS/EBS Rules.....	5
B. The Commission Should Not Increase The EBS Programming Requirements.....	7
C. The Commission Should Limit Any MVPD Opt-Out Option To MVPD Entities Using More Than Seven Digitized Channels.....	9
D. Commercial Operators And Licensees That Benefit From A Proponent's Transition Efforts Should Not Be Required To Reimburse Such Proponent Until They Launch Commercial Service.....	11
E. The Commission Should Not Delay The Effectiveness Of The New BRS/EBS Rules.....	14
III. CONCLUSION.....	16

Executive Summary

Sprint makes the following points in this consolidated opposition:

1. Sprint opposes petitions seeking to prohibit purchase options, require the filing of complete leases and adoption of 15-year lease terms with respect to EBS spectrum leases. The Commission adopted new secondary market leasing rules to promote flexibility and tie spectrum usage to the needs and demands of the marketplace, which yields more efficient results than command-and-control spectrum management techniques. These rules and policies have been applied to BRS/EBS spectrum to achieve the same results. Adopting the lease provisions proposed in the petitions would undermine these goals.

2. Sprint opposes IMWED's request to increase the minimum educational programming requirement from five percent to twenty-five percent. Such action is not needed to preserve the educational nature of EBS spectrum. Further, such action would limit the flexibility of EBS licensees to obtain lease income that might be used to achieve the overall educational mission more efficiently.

3. Sprint opposes the various proposals that establish an MVPD opt-out option beyond the scope of that which was proposed by the Coalition. High-site, high-power operations interfere with and prevent deployment of low-site, low-power operations of all types and, thus, should only be permitted to opt-out of being placed in the MBS in the limited circumstances spelled out in the Coalition's proposed opt-out scheme. In addition, those entities that could not meet the Coalition's opt-out criteria would be covered by the Commission's proposal to trade in LBS and UBS spectrum for a single digitized 6 MHz MBS channel. This proposal would allow all markets to be transitioned along the same timeline, ameliorate the interference potential that would result from wide-spread opt-out, and provide a means for rural operators to continue high-power, high-site operations at no cost to themselves.

4. Sprint opposes application of the reimbursement requirement prior to service deployment. The PCS cost-sharing rules triggered reimbursement upon service deployment and there is no reason to depart from that practice here. Service deployments follow business and financial plans, and requiring reimbursement prior to service deployment could disrupt those plans and deployment schedules. Licensees and operators already have a significant economic incentive to deploy service as soon as possible under their business plans. Further, licensees that elect to be a proponent for a given market will have gained the added commercial benefits of being able to offer service before other licensees in their markets.

5. Sprint opposes efforts to delay the effectiveness of the new BRS/EBS rules. The Commission should move forward with the BRS/EBS transition so that licensees can begin the process of getting services to the public. Proposals that would place rural operations on a different transition timeline would result in interference and would effectively halt the transition process elsewhere.

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**SPRINT CONSOLIDATED OPPOSITION TO
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Sprint Corporation ("Sprint"), pursuant to Section 1.429(f) of the Federal Communications Commission's ("FCC" or "Commission") Rules, submits this consolidated opposition to petitions for reconsideration of the *BRS R&O* filed by various parties.¹

¹ *Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz bands*, Report and Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 14165 (2004) ("*BRS R&O*" and "*FNPRM*").

I. INTRODUCTION

As a licensee and lessee of Broadband Radio Service (“BRS”) and Educational Broadband Service (“EBS”) spectrum, Sprint has an interest in this proceeding and supports the Commission’s efforts to revamp the BRS/EBS spectrum and service rules. To that end, Sprint filed a petition for reconsideration to refine certain aspects of the rules adopted under the *BRS R&O*, which would make the transition to the new BRS/EBS bandplan speedier and more efficient. Detailed below are Sprint’s objections to proposals set forth in petitions for reconsideration filed by other parties.

II. DISCUSSION

A. The Commission Should Not Place Restrictions On Leasing Or Other Contractual Activities Between BRS And EBS Entities.

The Commission adopted an open-ended approach towards leasing and other secondary market activities in the *Secondary Markets R&O*², which the Commission subsequently extended to BRS/EBS services in the *BRS R&O*.³ This approach recognizes that market forces – as opposed to the “command-and-control” spectrum management policies of the past – are best able to ensure that spectrum is put to its highest valued use. As the Commission explained in the *BRS R&O*, its flexible secondary market policies facilitate greater reliance on the marketplace to dictate services and devices, lead to more efficient and dynamic use of spectrum resources, enhance a panoply of policy initiatives and public interest objectives, enable the development of innovative services in rural areas, and establish regulatory parity with other wireless services.⁴ In

² *Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets*, Report and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 20604 (2003) (“*Secondary Markets R&O*”).

³ *BRS R&O* at ¶ 179.

⁴ *Id.*

adopting this approach for BRS/EBS operations, the Commission rejected various lease-related proposals that would have undermined its objectives. Some of these counter-productive proposals have been revived in petitions for reconsideration of the *BRS R&O* and should again be rejected.

1. Prohibitions Against Purchase Options Are Unwarranted.

The proposal of the ITFS/2.5 GHz Mobile Wireless Engineering & Development Alliance, Inc. (“IMWED”) to prohibit the inclusion of purchase options in EBS spectrum leases is unnecessary and should be rejected.⁵ IMWED argues that failure to prohibit the inclusion of EBS spectrum purchase options in EBS spectrum leases would prevent resolution of “the eligibility question” by creating “a lasting incentive to subvert the Commission’s policy.”⁶ The Commission has, however, resolved the “eligibility question” by electing to retain its EBS eligibility restrictions in the *BRS R&O*.⁷ Accordingly, there is no reason to adopt IMWED’s proposal. If, at some point in the future, the Commission elects to remove the eligibility restrictions, EBS entities should then be permitted to dispose of their spectrum in whatever manner they see fit. In Sprint’s view, EBS entities understand how best to utilize their spectrum resources to meet their own unique and vital education missions. Indeed, the Commission historically has recognized this fact by providing EBS licensees with broad flexibility to negotiate excess capacity leases that meet their particular needs.⁸ IMWED’s proposal would

⁵ Petition for Reconsideration of the ITFS/2.5 GHz Mobile Wireless Engineering & Development Alliance, Inc., WT Docket No. 03-66 (filed Jan. 10, 2005) at 10 (“*IMWED Petition*”).

⁶ *Id.*

⁷ *BRS R&O* at ¶ 152.

⁸ Both the secondary market and BRS/EBS rule overhaul proceedings are predicated, in large part, upon allowing market forces to dictate spectrum usage, which includes the facilitation of open-ended private transactions among private parties. *See id.* at ¶ 179; *Secondary Markets R&O* at ¶ 7.

contradict this approach,⁹ and, moreover, seems contrary to the Commission's long-standing policy of refraining from interference with private contracts except where necessary to protect the interests of end users of telecommunications services.¹⁰

2. No Legitimate Interest Would Be Served By Requiring Leases To Be Filed In Complete Form.

IMWED's proposal to require the filing of EBS leases in unredacted form or otherwise make such agreements available for public inspection is both inefficient and burdensome and should be rejected. IMWED's contends that the full texts of lease agreements must be made public so that the Commission and the public can ascertain whether the leases are in compliance with the Commission's requirements that pertain to EBS leasing.¹¹ IMWED's argument is without merit. As a starting point, the Commission already has determined that the filing of abbreviated leasing information would not impair its ability to ensure compliance with its rules, as it can simply request the full text, if it requires. Specifically, in the *Secondary Markets R&O*, which adopted the rules that now govern the mechanics of EBS leasing, the Commission concluded, "[w]e are streamlining the submission form to minimize the burden on lease

⁹ If anything, the *Secondary Markets R&O* suggests that BRS/EBS parties should be given wide latitude in negotiating leases. See, e.g., *Secondary Markets R&O* at ¶ 42 ("As a general matter, the greater the flexibility permitted by our [leasing] policies and rules, the more likely it is that parties will be able to enter into mutually desirable arrangements that are based on market demands.).

¹⁰ See, e.g., *Ryder Communications, Inc. v. AT&T Corp.*, Memorandum Opinion and Order, 18 FCC Rcd 13603 at ¶ 24 (2003). See also *Promotion of Competitive Networks in Local Telecommunications Markets*, First Report and Order and Further Notice of Proposed Rulemaking, WT Docket No. 99-217, 15 FCC Rcd 22983, 23053 (2000). In so much as IMWED seeks to apply its proposal retroactively, such action could amount to unlawful retroactive rulemaking. See *Bowen v. Georgetown University Hospital*, 488 U.S. 204, 208-209 (1988). In fact, in adopting the two-way rules, the Commission rejected similar requests that it require renegotiation of excess capacity leases made under the pre-existing rules, finding that "construction of existing agreements is a matter of contract law." *Amendment of Parts 21 and 74 to Enable Multipoint Distribution Service and Instructional Television Fixed Service Licensees to Engage in Fixed Two-Way Transmissions*, Report and Order, 13 FCC Rcd 19112, 19183 at ¶ 132 (1998) ("Two-Way Order").

¹¹ *IMWED Petition* at 10.

applicants while ensuring that we receive the information we need to complete our review of the proposed arrangement and to enforce our interference and other requirements as applicable to the lessee and the licensee.”¹²

Among other things, the Commission implemented its secondary markets policies to lower transaction costs and reduce administrative burdens to increase efficiencies and empower market forces in the spectrum usage arena, while retaining minimal yet sufficient regulatory oversight over these processes. The Commission’s decision to implement abbreviated filing requirements with respect to the leasing information that must be filed with the FCC represents a balancing of these two objectives. IMWED has not presented any arguments or information that would suggest that the Commission’s decisions in this regard are imbalanced. To the contrary, singling out EBS spectrum leases for disparate treatment would defeat both the purposes of the secondary market rules and policies as well as the Commission’s goal of achieving regulatory parity. Moreover, these agreements may contain data that involves or implicates business plans or other competitively sensitive information that would not normally be disclosed to the public.¹³

3. There Is No Legitimate Reason To Specify A 15-Year Lease Term In The BRS/EBS Rules.

Sprint opposes the joint proposal of the National ITFS Association and Catholic Television Network (collectively, “NIA/CTN”) to incorporate a 15-year limitation on lease terms

¹² *Secondary Markets R&O* at 20669 ¶ 153 (as the Commission noted, “[w]hile we will not routinely require the lease applicants to submit a copy of the lease agreement with the application, parties must maintain copies of the lease as well as any authorization issued by the Commission, and make them available for inspection by the Commission or its representatives.”). *See also id.* at 20660 ¶ 125; 47 C.F.R. §§ 1.9020(b)(3) and (c)(5); 47 C.F.R. §§ 1.9030(b)(3) and (c)(5).

¹³ The Commission recognized this danger in the *Secondary Markets R&O*, in which it refrained from requiring additional information on actual spectrum usage and other lease information because such information “may involve data (*e.g.*, areas of available spectrum) that could disclose a company’s business plans or sensitive information to its competitors [and] collection of this information would impose costs on the Commission as well as licensees.” *Secondary Markets R&O* at 20766 ¶ 193.

into new Section 27.1214, which governs, among other things, the grandfathering of leases in effect prior to the new BRS/EBS rules.¹⁴ Specifically, Sprint does not agree with NIA/CTN's contention that newly-adopted Section 27.1214 of the Commission's rules "does not correctly incorporate all of the pertinent portions of the Commission's prior policies governing ITFS leasing . . . particularly, the 15 year limitation on lease terms"¹⁵ To the extent NIA/CTN is requesting the inclusion of a 15-year term for *grandfathered* EBS spectrum leases, such inclusion is unwarranted. Section 27.1214 expressly provides that EBS leases entered into before January 10, 2005, that are "in compliance with leasing rules formerly contained in Part 74 of this chapter" may continue in force and effect. A 15-year term requirement is contained in former Section 74.931(e) and, thus, is properly incorporated by reference in Section 27.1214. To separately reiterate a requirement that is properly referenced in this manner would be both administratively redundant and confusing and, therefore, should be rejected.¹⁶

To the extent NIA/CTN is requesting that EBS spectrum leases entered into *after* January 10, 2005, must be subject to 15-year lease terms, such request has no merit. The underlying goal of the BRS/EBS rule overhaul has been to promote flexibility and the efficiencies that result. As explained above, the public interest and spectrum management goals derived from the Commission's secondary market leasing policies have been well-established, and NIA/CTN does not address why the 15-year term limit is or could be consistent with these goals. In fact, NIA/CTN presents no justification for applying the 15-year limit, other than to state that it was

¹⁴ Petition for Reconsideration of the Catholic Television Network and the National ITFS Association, WT Docket No. 03-66 (filed January 10, 2005) at 20 ("*NIA/CTN Petition*").

¹⁵ *Id.*

¹⁶ Further, as Sprint explained in its initial reply comments, the Commission has never specified how the fifteen-year term was to be calculated or codified within the lease, or how renewal provisions might

adopted in 1998.¹⁷ The facts and circumstances that justified the limit in 1998, however, seem irrelevant with respect to the new, open-ended and flexible licensing rubric that will govern BRS/EBS operations hereforward. In any event, the secondary market leasing rules to which EBS spectrum leases entered into hereforward are subject already include specific term provisions.¹⁸

B. The Commission Should Not Increase The EBS Programming Requirements.

Sprint opposes any increase to the minimum educational programming content requirement of five percent, such as IMWED's reiteration of the proposal it first proffered in its comments to increase the minimum educational programming content requirement from five percent to twenty-five percent.¹⁹ As Sprint discussed in its comments, there is no factual basis to mandate increases to the programming requirement, and IMWED's petition for reconsideration does not present any new issues of fact or law that would alter Sprint's initial conclusion.²⁰ IMWED suggests that raising the educational content requirement will somehow preserve the educational character of EBS spectrum. However, IMWED fails to demonstrate why the set-aside of five percent of EBS spectrum for EBS programming is inadequate to meet that purpose. For example, as Sprint pointed out in its comments, "[t]he high compression rates of digital technology today (which provide excellent signal quality with compression ratios of 8:1, 10:1 or higher) enable an ITFS licensee that is able to secure digitization of its system by leasing 95% of

impact that calculation, and instead expressly left negotiation of such terms to the leasing parties. *See* Reply Comments of Sprint, WT Docket No. 03-66 (filed Oct. 23, 2003) at 22.

¹⁷ *See NIA/CTN Petition* at 20.

¹⁸ *See* 47 C.F.R. §§ 1.9020(a) and (m), and 47 C.F.R. §§ 1.9030(a) and (l).

¹⁹ *See IMWED Petition* at 7-9. *See also* Comments of IMWED, WT Docket No. 03-66 (filed Sept. 8, 2003) at 7-10 and Reply Comments of IMWED, WT Docket No. 03-66 (filed Oct. 23, 2003) at 9-12.

²⁰ *See* Comments of Sprint, WT Docket No. 03-66 (filed Sept. 8, 2003) at 18-19.

the capacity to provide more programming using its reserved 5% than an analog ITFS licensee would be able to provide using 25%.”²¹

Furthermore, increasing the five-percent holdback requirement would reduce the amount of spectrum available for lease by EBS licensees and thus impose opportunity costs in the form of lost lease revenues that might otherwise be used to achieve the licensees’ overall educational missions more efficiently.²² This probably explains, in part, why many EBS entities themselves soundly rejected this proposal in the underlying notice and comment round.²³ As with the other lease-related restrictions proposed by IMWED, increasing the minimum programming content requirement from five percent to twenty-five percent would contradict the Commission’s market-oriented approach for BRS/EBS leases. As the Commission observed in the *NPRM*, “[i]n general, we prefer to let the markets determine the outcome of such [channel capacity leasing] arrangements without imposing limits, unless specific reasons justify a contrary policy.”²⁴

²¹ Comments of Sprint, WT Docket No. 03-66 (filed Sept. 8, 2003) at 19.

²² For example, looking at the twenty-five percent figure in isolation, it may well be more efficient for an EBS licensee to utilize five percent of this spectrum for traditional one-way educational programming operations, lease the remaining twenty percent and use such monies to defray costs of Internet-based and/or other programming platforms, thus, providing multiple means to achieve its important educational mission.

²³ NIA/CTN, for example, rejected the idea of raising the five percent benchmark because such action would greatly reduce the flexibility enjoyed by EBS licensees. *See* Joint Comments of NIA/CTN, WT Docket No. 03-66 (filed Sept. 8, 2003) at 11-12 (as NIA/CTN noted, “[n]ot only would [raising the five percent benchmark] reduce the flexibility enjoyed by licensees, many leases have been entered into based on the standard approved by the FCC in the Two-Way Report and Order, and changing that standard would require these arrangements to be re-negotiated, often to the detriment of the ITFS licensee, who would be expected to make concessions in exchange for the right to reserve the additional capacity it determined it did not need in the first place.”).

²⁴ *Amendment of Parts 1, 21, 73, 74 and 101 of the Commission’s Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz bands*, 18 FCC Rcd 6722, 6771 ¶ 117 (2003) (“*NPRM*”). .

IMWED fails to raise specific reasons that would justify such a contrary policy now.²⁵ The bottom line is that if EBS entities desire to retain twenty-five percent of their spectrum, they can negotiate their leases accordingly.

C. The Commission Should Limit Any MVPD Opt-Out Option To MVPD Entities Using More Than Seven Digitized Channels.

The Coalition proposed that multichannel video programming distributors (“MVPDs”) that either are (i) providing service to at least five percent of the households in their Geographic Service Areas (“GSAs”), or (ii) providing digital video service using more than seven digitized video channels as of October 7, 2002, should be permitted to opt-out of the transition process.²⁶ The Commission elected not to adopt such an opt-out, but rather will allow MVPDs providing service to at least five percent of households in their GSAs to apply for a waiver from transition obligations on a case-by-case basis.²⁷ In adopting this approach, the Commission sought to balance the need to keep the transition process as simple as possible against the need to provide protection to MVPD operators that developed successful businesses under the old BRS/EBS

²⁵ Perhaps nowhere is this better exemplified than IMWED’s apparent suggestion that the Commission consider, in lieu of a straight twenty-five percent education content requirement, a mandatory recapture right under which EBS lessors could take back twenty percent of their leased spectrum. *IMWED Petition* at 9. The recapture concept was developed and proposed almost a decade ago under entirely different circumstances and was soundly rejected by the Commission at that time because of the uncertainty and disincentives it would create from the commercial operator’s perspective with respect to putting the spectrum into use. See *Two-Way Order* at 19159-60 ¶ 89. Even fast-forwarding to the present day, however, that seven-year old determination still rings true valid – a recapture requirement would reduce the flexibility of operators and serve as a disincentive to using spectrum subject to such requirement, thereby undermining the fundamental goals and rules of the new secondary market and BRS/EBS rules which now govern EBS spectrum leasing.

²⁶ *First Supplement To ‘A Proposal For Revising The MDS And ITFS Regulatory Regime,’* Wireless Communications Association International, Inc., National ITFS Association and Catholic Television Network (the “Coalition”), RM-10586, WT Docket No. 03-66 (filed Nov. 14, 2002) at 4-5.

²⁷ See *BRS R&O* at ¶ 77.

rules.²⁸ Sprint reiterates its support for the Coalition's proposal. In Sprint's view, the Coalition's approach would both be administratively simple to implement and avoid the uncertainties associated with the waiver process that have caused concern among MVPD operators.²⁹

Sprint, however, opposes the petitions that variously seek to expand the opt-out option beyond the limited scope of the Coalition's proposal.³⁰ These opt-out proposals would effectively make opt-out available to almost all MVPD operators, which was never the intent of the Coalition's opt-out approach and would raise significant interference problems.³¹ It should be reiterated that the primary element of the BRS/EBS rechannelization scheme is the placement of high-site, high-power operations within a single Middle Band Segment ("MBS"), because these operations interfere with low-site, low-power operations.³² This fundamental dynamic does not change simply because a high-site, high-power system happens to be located in a "rural" area, as interference studies submitted into the record previously by the Coalition have demonstrated.³³

²⁸ *Id.*

²⁹ See, e.g., Petition for Reconsideration of Central Texas Communication ("CTC"), WT Docket No. 03-66 (filed Jan. 10, 2005) at 10 ("*CTC Petition*"); Petition for Reconsideration of W.A.T.C.H. TV, WT Docket No. 03-66 (filed Jan. 10, 2005) at 7.

³⁰ See *CTC Petition*; Petition for Reconsideration of BRS Rural Advocacy Group, WT 03-66 (filed Jan. 10, 2005).

³¹ For similar reasons, Sprint opposes the alternative bandplan proposed by the law firm of Blooston, Mordkofsky, Dickens, Duffy & Prendergast ("Blooston") in which licensees serving "rural" areas would receive three 6 MHz channels for high-power operations and one 5.5 MHz channel for low-power operations. See Petition for Reconsideration Blooston, Mordkofsky, Dickens, Duffy & Prendergast, WT 03-66 (filed Jan. 10, 2005) at 5 ("*Blooston Petition*"). Such plan would throw the entire BRS/EBS rechannelization scheme in disarray, resulting in significant and wide-spread interference problems across the country, as it would vastly increase the size of MBS, and would not leave sufficient room for BRS channels 1 and 2.

³² See *BRS R&O* at ¶¶ 19 and 39.

³³ See Reply Comments of WCA, NIA and CTN, DA 02-2732, RM-10586 (filed on Nov. 29, 2002) at 31-33 (examining interference from Madison, WI to Milwaukee and Chicago and from Socorro, NM to Albuquerque), and Reply Comments of WCA, NIA and CTN, WT 03-66 (filed on Oct. 23, 2003) at

Moreover, in Sprint's view, the Commission's proposal to allow licensees to return spectrum in the Lower band Segment ("LBS") and Upper Band Segment ("UBS") in exchange for a digitized 6 MHz channel in the MBS represents a better approach to accommodating those MVPD operators that do not meet either of the Coalition's proposed opt-out benchmarks.³⁴ The Commission's proposed "opt-out" approach would ensure that the costs of migrating operations to the MBS, including the conversion of analog transmission technology to digital technology, would be subject to reimbursement by the entity that acquires the returned LBS/UBS spectrum at auction.³⁵ Following this approach also would allow all areas – rural and otherwise – within a geographic market to be transitioned along the same timeline, thus ameliorating the interference potential that would otherwise disrupt and/or prevent completion of this vital process, while providing a means for rural operators to continue high-site, high-power operations at no cost to themselves through the use of digital technology in the MBS.

D. Commercial Operators And Licensees That Benefit From A Proponent's Transition Efforts Should Not Be Required To Reimburse Such Proponent Until They Launch Commercial Service.

In its petition for reconsideration, Clearwire Corporation ("Clearwire") proposes a *pro rata* cost-sharing plan based upon the PCS cost-sharing rules to cover BRS/EBS transition costs.³⁶ Unlike the PCS cost-sharing approach, however, Clearwire proposes to require reimbursement payments within thirty days of invoice immediately following post-transition

Attachment C (examining the impact of the Twin Falls, ID MMDS/ ITFS video operation on Sprint cell sites in the Boise-Nampa, ID BTA).

³⁴ See *FNPRM* at ¶¶ 313-314.

³⁵ *Id.*

³⁶ Petition for Reconsideration of Clearwire Corporation, WT Docket No. 03-66 (filed Jan. 10, 2005) at 3-9 ("*Clearwire Petition*").

notification filing.³⁷ Sprint opposes the application of the reimbursement requirement prior to service deployment.

Most, if not all, BRS/EBS licensees and operators will want to deploy service according to schedules set forth in their business and capitalization plans. Requiring reimbursement prior to service deployment could disrupt those schedules and cause delays in service deployments, as funds ear-marked for deployment costs are diverted to reimbursement ahead of the deployment schedule. Moreover, if a given licensee elects to be the proponent for a given market and deploys faster than others, that is a business decision of that licensee/operator, who presumably will gain the added commercial benefits of being able to offer service before other licensees in that market.

Clearwire contends that entities with relatively smaller spectrum holdings that elect to be proponents could be disproportionately impacted by having to lay out the costs to transition a market, but having to wait “indefinitely” until it can recover costs from future entrants.³⁸ While it is conceivable that in a given market, an entity that voluntarily elects to be the proponent may have less spectrum holdings relative to all other commercial operators in that market and, thus, may be disproportionately impacted in terms of the obligations they take on as a result of their voluntary business decision, Sprint suspects that those situations will be rare. Most if not all licensees and lessees of BRS/EBS spectrum have invested a great deal of money to acquire those rights and have every economic incentive to monetize those holdings within the parameters of their business plans as soon as possible.³⁹ Accordingly, the notion that entities will tarry in

³⁷ *Clearwire Petition* at 7.

³⁸ *Id* at 7-8.

³⁹ Further, the substantial service requirements will require service deployments by a date-certain (which Sprint has proposed should be five years from the transition notification filing deadline). The longer a

launching service seems economically irrational, and the further notion that they might delay launching service altogether to avoid paying a comparatively minor cost of their *pro rata* share of EBS transitioning seems entirely unreasonable.

It is instructive that the PCS cost-sharing rules upon which Clearwire bases its reimbursement proposals do not require reimbursement payments from the subsequent entrant until commercial deployment.⁴⁰ As Clearwire pointed out, in adopting the PCS cost-sharing rules, the Commission acknowledged that the first licensee to transition the market potentially bore a disproportionate share of relocation costs, which created a potential free-rider problem with respect to subsequent entrants.⁴¹ However, it was precisely *because of* the free-rider problem inherent in the PCS licensing/auctioning plan that the commission adopted the cost-sharing mechanism that it did – including the requirement that reimbursements be made *after* service deployment.⁴² Moreover, it seems that Clearwire’s proposal could impose its own set of burdens upon licensees with smaller spectrum holdings relative to other licensees in the market. For example, such entities could themselves be forced to pay their cost-recovery share well before their

licensee waits to launch service, the closer it gets to risking not getting that service deployed before the substantial service deadline. Given that failure to meet such deadline will result in cancellation of the license, it seems extremely likely that licensees will act to avoid that risk. In any event, it is clear that Clearwire’s contention that a proponent could bear the entire cost of a transition “indefinitely” is simply wrong. *Clearwire Petition* at 8.

⁴⁰ See 47 C.F.R. §§ 24.247(a) and 24.249.

⁴¹ *Clearwire Petition* at 8.

⁴² *Amendment to the Commission's Rules Regarding a Plan for Sharing the Costs of Microwave Relocation*, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 8825, 8830-31 (1996) (“*PCS Cost Sharing Order*”). The Commission elected not to require reimbursements until after service deployment because that is the point at which interference would have occurred if the relocated system were still in place. See *Amendment to the Commission's Rules Regarding a Plan for Sharing the Costs of Microwave Relocation*, Notice of Proposed Rulemaking, 11 FCC Rcd 1923, 1950 ¶¶ 57 and 58 (1995). See also *PCS Cost Sharing Order* at Appendix A ¶¶ 38 and 39.

revenue streams from deploying service would be available to help defray those costs, which could be particularly problematic for entities with limited financial resources.

Finally, Sprint opposes Clearwire's proposal to exempt EBS and BRS lessees that have less than three years remaining on their leases with no renewal right from reimbursement obligations.⁴³ It is not clear how, or even if, the Commission could effectively administer such provision, short of conducting a review of the complete lease in question, which would be administratively inefficient and cumbersome. In any event, such a scenario would involve a lessee either maintaining a pre-transition system or deploying a new service despite knowing it has no ability to renew its lease, which seems highly unlikely. There is no need for the Commission to develop a solution to a problem that does not exist. Rather, the Commission should make reimbursement contingent upon the launching of commercial service.

E. The Commission Should Not Delay The Effectiveness Of The New BRS/EBS Rules.

Sprint opposes the proposals of Blooston and the Independent MMDS Licensee Coalition ("IMLC") that would delay the effectiveness of the new BRS/EBS rules.⁴⁴ As indicated, it is critical that the Commission move forward with the BRS/EBS transition so that licensees – in both urban and rural areas – can begin the process of getting services to the public. Blooston's proposal to give rural licensees until January 10, 2013, to transition to the new bandplan would defeat the underlying purpose of segmenting high-site, high-power operations within the MBS and low-site, low-power operations within the LBS and UBS.⁴⁵ Specifically, Blooston's

⁴³ *Clearwire Petition* at 4.

⁴⁴ See *Blooston Petition* at 7; *Petition for Reconsideration of the Independent MMDS Licensee Coalition*, WT Docket No. 03-66 (filed Jan10, 2005) at 4.

⁴⁵ *Blooston Petition* at 7.

proposal would result in wide-spread interference. Sprint appreciates Blooston's concern that transition costs could be significant to rural operators, but that concern will not be addressed by delaying the transition by a few years. Instead, the Commission can address Blooston's concern by requiring that transitions be undertaken on a Basic Trading Area ("BTA") as opposed to a Major Economic Area ("MEA") basis. In addition, as indicated above, the Commission should adopt its proposal to provide a 6 MHz digitized channel in the MBS in exchange for returned LBS/UBS spectrum, which would provide transition funding so that no costs would be incurred by operators electing such option. IMLC's request to delay the effective date of the transition rules in a petition for reconsideration rather than a stay request seems misplaced, given that those rules already are effective.⁴⁶ In any event, it is unclear why or how the unresolved state of the *FNPRM* or the possibility that the Commission might act upon the petitions for reconsideration of the *BRS R&O* would necessarily prevent IMLC and others from planning or commencing transitions, as IMLC contends. The Commission cannot be expected to delay the effective date of new rules until after all possibilities for appeal have expired.

⁴⁶ *IMLC Petition* at 4.

III. CONCLUSION

For the foregoing reasons, Sprint respectfully requests that the Commission act in accordance with the recommendations identified above.

Respectfully submitted,

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